

AGREEMENT BETWEEN CITY OF SUNNYVALE
AND C.J. OLSON FOR MAINTENANCE OF ORCHARD IN AREA BOUNDED BY
CRESCENT AVENUE, MICHELANGELO DRIVE, MANET DRIVE AND SUNNYVALE
COMMUNITY CENTER

THIS AGREEMENT dated December 15, 1992 is by and
between the CITY OF SUNNYVALE, a municipal corporation ("CITY"),
and C.J. OLSON ("CONTRACTOR").

WHEREAS, in connection with the arboretum park site currently
owned and used by CITY, CITY desires to continue to maintain in
proper fashion a working apricot orchard on land more specifically
described in Exhibit "A" attached and incorporated by reference;
and

WHEREAS, CONTRACTOR has satisfactorily provided such
maintenance of such orchard for the past fifteen (15) years, and
CITY has determined that by reason of the demonstrated abilities of
CONTRACTOR in performing such prior maintenance and the past
experience of CONTRACTOR, CONTRACTOR possesses the skill and
expertise to provide the required services as an orchardist;

WHEREAS, CONTRACTOR is willing to perform the required
services upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONTRACTOR

CONTRACTOR shall provide the following renewal, maintenance
and other services for CITY with respect to its apricot orchard as
described in Exhibit "A":

- (a) CONTRACTOR shall remove all dead trees and stumps and
replace them with new Blenheim apricot trees at the
expense of CONTRACTOR. CONTRACTOR will make its best
efforts to obtain all necessary replacement trees at the
earliest opportunity in advance of the appropriate
planting season for such trees. The parties understand
and agree that the purpose and intent of this Agreement
is to continue to provide CITY with a complete working
orchard at all times.
- (b) CONTRACTOR shall well and sufficiently furnish all labor,
tools, equipment, apparatus, facilities, transportation
and all materials necessary to perform and complete in a
good workerlike manner the above removal and replanting
along with continuing maintenance of the orchard in a
proper fashion, including but not limited to pruning,
spraying, discing, thinning, picking, fertilizing,
weeding and irrigating as required to maintain said
orchard in a health and productive state. CONTRACTOR
shall bear the expense of all of the foregoing services.

CONTRACTOR shall determine the method, details and means of performing the services. CITY shall have no right to, and shall not, control the manner or determine the method of accomplishing CONTRACTOR's services. CONTRACTOR shall perform the services at such times and places as CONTRACTOR shall determine, with the exception of attendance at meetings required in conjunction with the services rendered.

2. Responsibilities of Parties for Maintenance at Boundaries; Signage

- (a) CONTRACTOR shall be responsible for keeping all sidewalks and walkways abutting the orchard free of dirt and debris from the operations of CONTRACTOR, and CITY shall be responsible for keeping all such sidewalks and walkways free of weeds.
- (b) CITY shall be responsible for maintenance of that portion of the orchard adjacent to Crescent Avenue from the curb to the top of the berm.
- (c) CONTRACTOR may erect a temporary wire fence around the orchard for a period of one month during the harvest season.
- (d) CITY shall have the right to install educational/interpretive signage relating to the orchard at either or both of two locations within the orchard as shown on Exhibit "A", and upon such installation CONTRACTOR shall have no further obligations of maintenance or rights of harvest with respect to the area within which any such signage is installed.

2. Time for Performance

The term of this Agreement shall be for ten (10) years from the date of execution, unless otherwise terminated.

3. Duties of CITY

CITY shall supply any documents or information available to CITY required by CONTRACTOR for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

- (a) In return for the above services to be provided by CONTRACTOR and CONTRACTOR's expense, CITY shall allow CONTRACTOR to harvest and retain the entire production from said orchard during the term of this Agreement.
- (b) As further compensation for the services of CONTRACTOR, CITY agrees to provide all necessary water for said apricot orchard to CONTRACTOR. CONTRACTOR understands

that said water shall be used only for said orchard.

5. Conflict of Interests

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR's obligations under this Agreement.

6. Compliance with Laws

- (a) CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, gender, age (persons 40 years of age or older), disability, national origin, or any other basis to the extent prohibited by federal, state or local law.
- (b) CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

7. Independent Contractor

CONTRACTOR is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR. CONTRACTOR is responsible for paying all required state and federal taxes.

8. Indemnity

CONTRACTOR agrees to indemnify and hold harmless CITY, its officers and employees from any and all claims, demands, actions, causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorneys' fees in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of CONTRACTOR, its officers, employees, agents, contractor, subcontractors or any officer, agent or employee thereof in relation to CONTRACTOR's performance under this Agreement.

9. Insurance

CONTRACTOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "B" attached and incorporated by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "B."

10. CITY Representative

ROBERT WALKER, Superintendent of Parks, or such other person

as may be designated by the Director of Parks and Recreation of CITY, shall represent CITY as the City Manager's authorized representative in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

11. CONTRACTOR Representative

C.J. OLSON shall represent CONTRACTOR in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONTRACTOR pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONTRACTOR representative.

12. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class mail with postage prepaid, or by commercial courier, addressed as follows:

To CITY:

City Manager
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONTRACTOR:

C.J. Olson
Route 1, Box 140
El Camino Real
Sunnyvale, CA 94087

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation or a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

13. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

14. Termination

- (a) If CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions,

CITY at its option may terminate this Agreement by giving written notice to CONTRACTOR.

- (b) Without limitation to such rights or remedies as CITY shall otherwise have by law, either party shall have the right to terminate this Agreement for any reason upon ninety (90) days' written notice to the other party. If the Agreement is terminated by CITY, CONTRACTOR shall be reimbursed by CITY for his expenses directly related to tree replacement over the life of the Agreement, together with preharvest expenses for the year of termination where the termination occurs before the commencement of the harvest. As a condition to such reimbursement of expenses, CONTRACTOR shall furnish to CITY annually a financial audit of his operations under this Agreement.

15. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

16. Miscellaneous

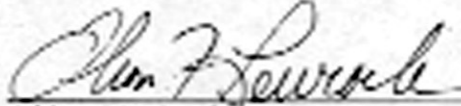
Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:
CITY CLERK

CITY OF SUNNYVALE ("CITY")


Deputy City Clerk

By 
City Manager

APPROVED AS TO FORM:


C.J. OLSON ("CONTRACTOR")

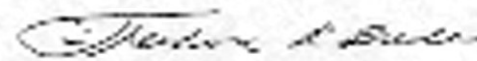
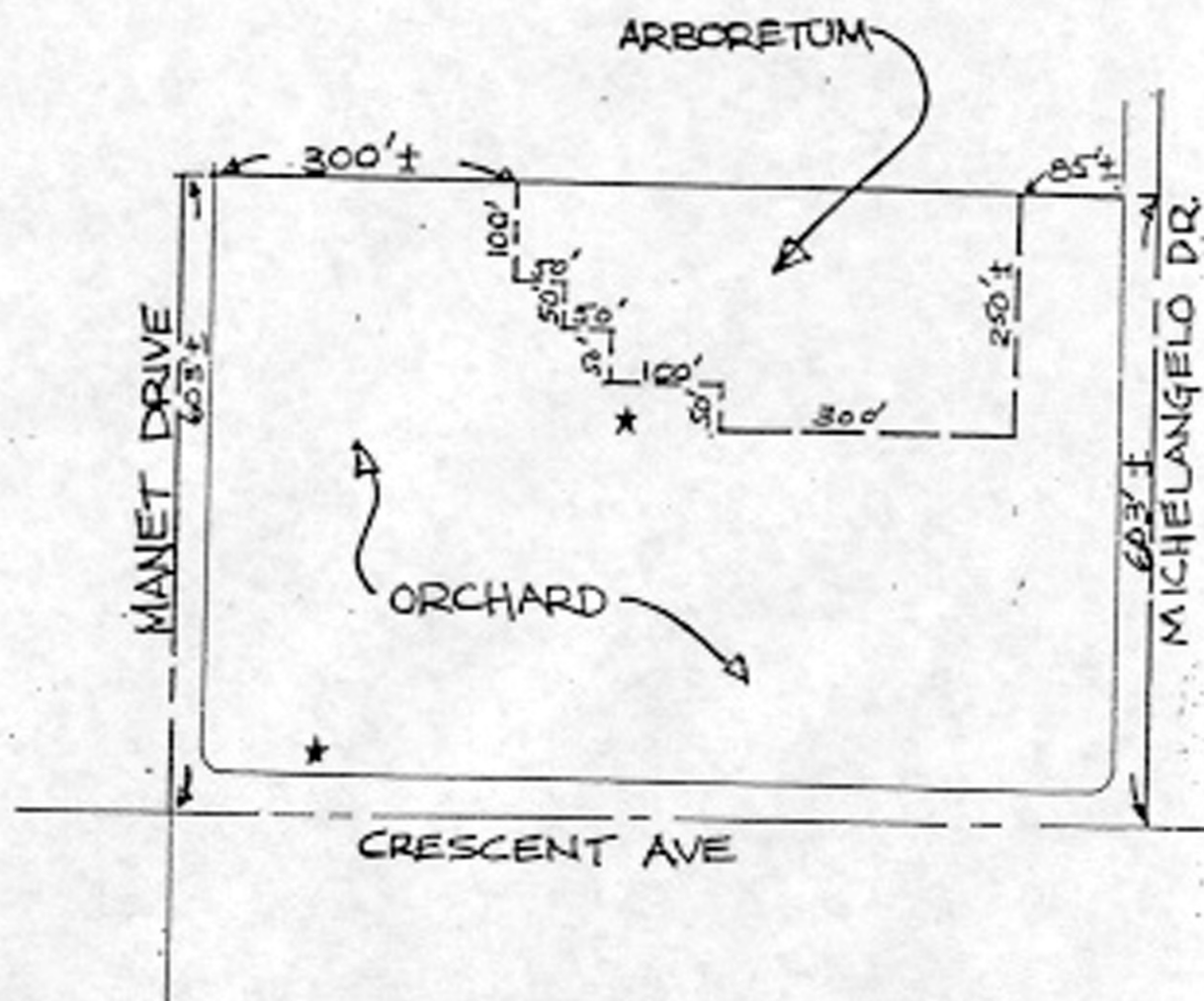

City Attorney

EXHIBIT "A"



★ POSSIBLE WORKS FOR EDUCATIONAL DELAYS/INTERFERING STRATEGIES